IN THE HIGH COURT OF DELHI

Bail Application No.3858/2006

Ali Sher ..... Petitioner
! through: Mr.Rambir Singh, Advocate

VERSUS

$ State (Govt.of NCT of Delhi) ..... Respondents
^ through: Mr.Pawan Sharma, Advocate.

% DATE OF DECISION: 21.09.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Petitioner is an accused in FIR No.467/04 dated 7.12.2006 P.S. Welcome Colony under Section 186/353/307/34 IPC read with Section 25/27/57/59 of the Arms Act.

2. Petitioner is named as an accused in the FIR. It is recorded in the FIR that secret information was received by the Duty Officer of P.S. Welcome Colony that at around 7 PM armed criminals would assemble at Jheel Park, Welcome Colony, Seelampur. Information to said effect was recorded in the

Rojnamcha. A raiding party was organized consisting of a Sub-Inspector, an Assistant Sub-Inspector, 2 Head Constables and 3 Constables.

3. In vehicle No.DL-1L-D-5051 the raiding party reached the park in question. One Jamil Ali, resident of House No.42, Gali No.20, Braham Puri, Seelampur, aged 40 years, agreed to join the investigation. The raiding party concealed themselves near the Jheel Park. At around 7.05 PM, 9 persons came on 4 motor cycles and stationed themselves near the fountain wall of the park. As the police party moved towards the said persons, they started firing. Police retaliated the fire. 7 persons were apprehended which included the petitioner. 2 out of 9 persons who had assembled managed to flee.

4. Alleging false implication, petitioner prays that he be released on bail. It is stated that the petitioner is in judicial custody since 8.12.2004 and that only 6 out of 22 witnesses of the prosecution have been examined. It is stated that as per the FIR no weapon was recovered from the petitioner. That desi katta and live cartridges were recovered from Chander Mohan and Umesh @ Rahul.

5. It is urged that Chander Mohan was admitted to bail by the learned ASJ vide order dated 21.2.2006.

6. At the outset, it may be noted that contention of learned counsel for the petitioner that in the FIR it has not been recorded that any weapon was recovered from the petitioner is incorrect. In the FIR it is categorically recorded that petitioner was apprehended by Constable Pradeep Kumar along with a desi katta.

7. As regards the order granting bail to Chander Mohan, I note that the learned ASJ has categorically recorded that since Chander Mohan was not armed with any weapon at the time of alleged occurrence, case was made out to admit Chander Mohan to bail. I may further note that the learned ASJ has over looked the fact that even Chander Mohan was armed with a katta. This fact has been categorically recorded in the FIR.

8. In my opinion, where a co-accused has been released on bail on an incorrect premise, said order cannot be pressed into aid to seek bail by a co-accused on the ground of parity.

9. Thus, petitioner would have to stand on his own legs.

10. The public witness, Jamil Ali, has been partly examined as PW-1. In his testimony, Jamil Ali has stated that on the day of occurrence, at around 7 PM, he was going towards Braham Puri and had reached near the park when some police officers requested him to be associated in the raid. He stated that he

was made to sit under a tree at some distance. After some time, he saw the accused persons present in court firing. The police surrounded the accused persons. That the accused persons came on 4 motor cycles but one motor cycle sped away. That 7 persons were apprehended by the police. He stated that he could not tell who the persons were because it was night. He stated that 3 kattas were recovered from the accused persons.

11. Thus, PW-1, Jamil Ali, has apparently supported the case of the prosecution.

12. But, I may note a very disturbing feature.

13. Jamil Ali was partly examined on 15.9.2005. Thereafter, police officers have been examined as PW-2 to PW-6. No urgency has been shown by the learned public prosecutor or the investigating officer to complete the testimony of PW-1.

14. Till PW-1 is fully examined, it would be inappropriate to discuss, even for the purpose of prima facie finding, the incomplete testimony of PW-1.

15. Petitioner is an accused in 4 other FIRs. The same are as under:-

(i) FIR No.894/2000 u/s 356/379/34 IPC, PS Jahangirpuri.
(ii) FIR No.289/03 u/s 308/34 IPC, PS Jahangirpuri.
(iii) FIR No.461/04 u/s.394/397/412/120B/34 IPC, PS Mansarovar Park
(iv) FIR No.852/04, u/s.379/411/34 IPC, PS Shalimar Bagh.

16. In my opinion, it would be inadvisable to release the petitioner on bail at this stage. Till PW-1 is fully examined and subjected to cross-examination, it would not be prudent to release the petitioner on bail who, as noted above, is an accused in as many as 5 FIRs relating to dacoity, causing grievous injuries likely to cause death, etc.

17. Declining the bail to the petitioner I direct the learned ASJ to ensure that PW-1 is examined on date next after the date already fixed for hearing and examine PW-1 on day to day basis till his evidence is complete.

18. I grant liberty to the petitioner to seek fresh bail after PW-1 is examined.

19. Subject to directions aforesaid, petition is dismissed.

20. LCR be returned.

September 21, 2007 **PRADEEP NANDRAJOG, J.**
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